IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 18080 of 2001

Between:

D. Narasimha Murthy, S/o. late D. Venkat sReddy,
O/o. Dist A.P. State Civil Supplies Corporation Ltd., Ongole,
Prakasam District.

..... PETITIONER

AND

1 The Vice-Chairman and Managing Director, A.P. State Civil Supplies Corporation Ltd., 6-3-655/1/A, Civil Supplies Bhavan, Somajiguda, Hyderabad.
2 The District Manager, A.P. State Civil Supplies Corporation Ltd., District Office, Ongole, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order more in the nature of Writ of Mandamus declaring the action of the 1st respondent in its Proc.No. P.Admn. 64/90 dated 3-3-1990 putting me at Sl.No.9 below all the Office Assistants who are opted for conversion as Accountants Gr-II which is illegal, arbitrary and petitioner seniority as Accountant Gr-I should be restored as Sl.No.1 as per proceedings of the 1st respondent dated 4-3-1987 P. Admn.64(2)/87 and with all consequential benefits from 26-4-1988 Proc.P.Admn.56(6)/88of 1st respondent the date of which the Juniors given promotions as Gr-I Accountant and further direct the respondents to consider his case for promotion to the post of Assistant Manager in the existing vacancies.

Counsel for the Petitioner: MR.K.HARI PRASAD

Counsel for the Respondents: MR.M.B.THIMMA REDDY, Standing Counsel for the A.P. State Civil Supplies Corporation.

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 18080 of 2001

O R D E R:

Challenging the action of the 1st respondent in not considering the case of the petitioner for promotion to the post of Assistant Manager and considering the other persons in other category as per Section 18(c) of the A.P.S.C.S.C.L who are working as Senior Assistants in the same Corporation and thus depriving the right of the petitioner, the present writ petition is filed.

The petitioner is working as Accountant Grade-I in the 2nd respondent office. The case of the petitioner is that the 1st respondent vide Circular Memo No.P.Admn.64(2)/88 dated 4.3.1987 communicated tentative seniority list by fixing his seniority at Sl.No.1. But, subsequently he was placed at Sl.No.3 after adding the names of Sri G.Nagabhushan Rao, Accountant Gr-II and Sri B.Asi Babu, Accountants Gr-II who are working as Assistants in the respondent-Corporation which is a separate category. The said individuals were converted at their option and their seniority was fixed as per the provisions of Rule-18C of the A.P.S.C.S.C.L. Staff Recruitment and Service Regulations. The petitioner appealed the same to the 1st respondent but his representation was rejected. It is further stated that the individuals who are working as Gr-III Assistants have been

converted as Accountants and they are juniors to him in the first appointment as Grade-III Accountants and the seniority was maintained separately for Assistants and Accountants. Therefore the action of the respondents in putting him at Sl.No.9 below all the Office Assistants who are opted for conversion as Accountants Gr-II is illegal and arbitrary.

The respondents filed counter affidavit stating that since the cadre of Assistants Grade-II and Accountants Gr-II carry the same scale of pay the seniority on conversion in Accountant Gr.II has to be determined by taking the date of first appointment to the cadre from he was transferred. In view of the above conversion the Sl.No.1 of the petitioner has come down at Sl.No.3. Prior to the promotions of the petitioner as Accountant Gr.I, there were some more Accountants Gr.I existing in the seniority list and as such the petitioner was placed at Sl.No.9 in the seniority list of Accountants Gr.I and therefore the seniority list of Accountants Gr.I cannot be treated as illegal.

Learned counsel for the petitioner contended that the practice of allowing the Office Assistants Gr.II upon conversion as Accountants Gr.II would affect the promotion channel to the persons who are working as Accountants Gr.II and the individuals who are converted in the category of Gr.II Accountants were juniors in the category of first appointment as Gr.III and they were given promotions as Gr.II Accountants earlier to the promotion of the petitioner; that the seniority of these categories has been maintained separately and therefore the action of the respondents is clearly illegal. He further contended that upon conversion the internal promotions cannot be taken for the purpose of seniority but the initial appointment has to be

taken into consideration for the purpose of determining the seniority. Therefore, he prays to allow the writ petition.

On the other hand, learned standing counsel for the respondents contended that the rules governing the service conditions of the petitioner permit transfer of a person from one category or grade of service to another category or grade and the first appointment cannot be taken for determining the seniority and the seniority of a person so transferred or converted shall be determined with reference to the date of first appointment to the category or grade from which he was transferred and hence there are no grounds to interfere with the impugned proceedings.

It is not in dispute that the petitioner was initially appointed as Gr.III Accountant in the year 1987. After issuing the promotions a tentative list of Gr.II Accountants was communicated where his seniority was fixed at Sl.No.3 instead of Sl.No.1. The persons who are converted from Assistants and juniors to him in the cadre of Gr.III have become seniors to the petitioner in the cadre of Gr.II Accountants. The said action, according to the petitioner, is illegal.

Learned counsel for the respondents placed strong reliance on a judgment of this Court in W.P. Nos. 15078 of 1987 and 17285 of 1988 dated 21.11.1992 wherein this Court held that Rule 18(c) of the Service Rules is to the effect that transfer of an employee from one category of service or grade to another category or grade carrying the same pay or scale of pay shall not be treated as first appointment in the latter and that the seniority of the transferee shall be determined with the date of first appointment. Rule 18(c) of the

A.P. State Civil Supplies Corporation Limited Rules reads as follows:

> "The transfer of a person from one category or grade of service to another category or grade carrying the same pay or scale of pay shall not be treated as a first appointment to the later for purpose of seniority; and the seniority of a person so transferred shall be determined with reference to the date of the first appointment to the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this regulation, seniority shall be determined by the appointing authority".

In the abovementioned judgment, this Court also held "If the transfer of respondents 2 to 12 from the category of Assistants to the category of Accountants was in the exigencies of service and in terms of Rule 33 (c) of the Service Rules, it cannot be doubted that they are entitled to carry with them their past service in the category of Assistants for purposes of seniority in the category of Accountants".

From the above judgment and as per Rule 18(c) of the Rules it is clear that if a person is transferred from one category or grade of service to another category or grade, the seniority has to be determined from the date of first appointment to the category or grade from which he was transferred. Admittedly the persons who were placed in the seniority list above the petitioner were appointed as Assistants Gr.II in the year 1982. Due to administrative exigencies those two individuals were converted as Accountants Gr.II. Such a conversion is permissible according to the Rules. If the contention of the petitioner is accepted, the persons who are placed in the seniority

above the petitioner will forego their seniority from 1982 to 1987. The contention of the petitioner is that he is senior in the initial appointment and basing on the initial appointment as Gr.III Accountant the seniority has to be determined. According to him, Gr.III Assistants were junior to him in the cadre of Gr.III and they were given promotions as Gr.II Assistants in the year 1982 and Gr.III Accountants were given promotions in February 1984. Therefore, by virtue of taking the past service in the cadre, some persons were placed above the petitioner in the seniority list.

Accountants Gr.II and Assistants Gr.II are in the common category with regard to pay-scales and the Rules permit for conversion of Assistants Gr.II to Accountants Gr.II. If the person is converted from Assistant Gr.II to Accountant Gr.II, his seniority has to be reckoned with reference to the date of his first appointment as Assistant Gr.II. Therefore, G. Nagabhushan Rao and B. Asi Babu were shown as seniors to the petitioner. Admittedly the said individuals joined their duty as Gr.II Assistants on 4.10.1982 and 29.9.1982 respectively whereas the petitioner joined as Gr.II Accountant on 7.3.1984. The administrative exigency as stated by the respondents is that the quantum of accounts work is more in the Corporation and the Corporation required more number of Accountants than Assistants. Therefore, the Corporation felt that it was necessary to fill up the Accountant posts with the existing employees who possess the qualification of Accountancy in the cadre of Assistants Gr.II. Rule 18(c) of the Civil Supplies Rules has not been challenged. Simply because the promotion of the petitioner has been affecting in view of the fact that G. Nagabhushan Rao and B. Asi Babu were shown as seniors in the seniority list while taking the date of their promotion into Gr.II Assistants, the contention of the petitioner cannot be sustained because the conversion from one category to another category is permissible and the seniority has to be reckoned when a person is converted from one category to

another category with reference to his date of first appointment to the category or grade from which he was transferred. Therefore, the action of the respondents cannot be said to be illegal or arbitrary. Even the learned counsel for the petitioner did not point out that the procedure adopted by the respondent-Corporation in giving seniority to G.Nagaghushan Rao and B. Asi Babu is contrary to the Rules.

For the aforesaid reasons, the writ petition is devoid of merit and it is accordingly dismissed. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --07—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Vice-Chairman and Managing Director, A.P. State Civil Supplies Corporation Ltd., 6-3-655/1/A, Civil Supplies Bhavan, Somajiguda, Hyderabad.
2 The District Manager, A.P. State Civil Supplies Corporation Ltd., District Office, Ongole, Prakasam District.

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